## LIM THIAN HEN & ORS. v. REGINA; TAN BENG SENG v. REGINA; CHUA AH SENG v. REGINA.

[C. Cr. A. (Murray-Aynsley, C.J., Brown and Buttrose, JJ.) May 14, 1953]

[Singapore — Criminal Appeals Nos. 1, 2 and 4 of 1953]

*Penal Code, s. 397 — Armed robbery — Sentence of whipping.*

The appellants who had been convicted of armed robbery had been sentenced to whipping in addition to their sentences of imprisonment.

**Held:** (1) the sentence of whipping should be imposed only where there is evidence of a substantial degree of actual physical violence; (2) in the cases before the Court the degree of violence employed was not such as to justify a sentence of whipping.

CRIMINAL APPEAL.

Appellants in person.

*H. B. Livingstone* (Crown Counsel) for the respondent.

*Cur. Adv. Vult.*

The judgment of the Court of Criminal Appeal was delivered by :—

**Murray-Aynsley, C.J.** : — These are three appeals, in the first of them the appellants were convicted of armed gang robbery, in the other two, of armed robbery. In the first case there was an appeal against conviction only. We consider that there was insufficient evidence that five persons took part in the robbery, and in consequence we are of the opinion that the conviction should have been of armed robbery only. We amend the conviction accordingly and this opens the question of sentence for consideration. It is convenient that the three cases should be considered together.

Certain general observations may be made. Every robbery, armed or otherwise, is a very serious offence and must be punished with a long term of imprisonment. In addition the law provides that sentences of whipping may be imposed. We consider, however, that such sentences should only be imposed in cases of a certain type. It is not possible to define in exact terms the dividing line between cases in which sentence of whipping should or should not be imposed. We wish, however, to give certain indications with a view to securing a measure of uniformity in the Courts of the Colony.

Every case of robbery involves violence to a certain extent. We consider that more than this degree of violence should be present before a sentence of whipping is imposed. We consider that there should be a substantial degree of actual physical violence. The word "brutality" is not exact, but it will probably help to explain what we mean. The physical violence used should involve injury which is not merely trivial or a substantial degree of pain.

In the cases before us at present, we are not of the opinion that the degree of violence employed was such as to justify a sentence of whipping. Therefore we amend the sentences in each case where whipping was imposed by omitting that part which relates to whipping. In other respects the sentences which were substantial periods of imprisonment were proper and we consider that they should stand.

ORDERS:

No. 1/53. — Leave to appeal against conviction. Conviction varied to one of armed robbery under section 397 of the Penal Code. Sentence on Lim Thiam Hen varied by omission of such part as relates to whipping. Otherwise sentences unchanged.

No. 2/53. — Sentences varied by the omission of such part as relates to whipping.

No. 4/53. — Leave to appeal against sentence. Sentence varied by omission of such part as relates to whipping.

*Sentences varied.*
*Appeals dismissed.*

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## P. MARIAPPAN v. NG AH BOEY.

[C. A. (Murray-Aynsley, C.J., Mathew, C.J. (F.M.) and Knight, J.) February 2, 1953]

[Singapore — Civil Suit No. 20 of 1952]

*Landlord and tenant — Control of Rent Ordinance — Hypothecation of tenancy to secure loan — Whether sub-tenancy created — Mortgage of interest in premises — Control of Rent Ordinance not applicable.*

The proceedings concerned a hypothecation of a tenancy held by one Abdul Rahman to secure a loan of $800 made by the appellant. The transaction took the form of a power of attorney to enable the appellant to collect rents and an agreement which purported to be a sub-demise to the appellant for 18 months. The loan was not repaid and on the expiration of the 18 months' period Abdul Rahman assigned his interest in the premises to the respondent who had no notice of the appellant's claims. The only point of substance which was argued in the Court below was as to whether a sub-tenancy was created.

**Held,** affirming the decision of the learned trial Judge: (1) the transaction did not amount to a sub-demise and the Control of Rent Ordinance did not apply and accordingly there was no answer to the respondent's claim; (2) it was not within the contemplation of the Control of Rent Ordinance that its protection should be given to a mere mortgagee.

CIVIL APPEAL.

*N. L. Macassey* for the appellant.

*Claude da Silva* for the respondent.

*Cur. Adv. Vult.*

**Brown, J.** [Trial Judge] : — The only point of substance in this case is whether the Agreement of 4th July, 1949, is an agency agreement or a tenancy agreement. The fact that the parties described themselves as the "tenant" and "sub-tenant" respectively has little materiality. The document must be looked at as a whole in order to determine what the parties were agreeing to.

By the preamble Abdul Rahman as the "tenant" agrees with the defendant as the "sub-tenant" to let him "occupy and possess" the premises for a term of one and a half years. By clause 1 the defendant is to pay to Abdul Rahman $800, which Abdul Rahman is to have no claim upon them. By clause 4 the agreement is to expire on the 28th February, 1951. By clause 5 the defendant is to quit and give up possession upon the expiry of this agreement.

On behalf of the defendant Mr. Macassey has argued that the agreement is in substance a mortgage. I think that the conclusive answer to that is that whether Abdul Rahman repaid the $800 or not the defendant was bound to give up possession upon the expiration of the agreement at the end of one and a half years. Thus his security for the loan was for a fixed period only. Moreover the rent receipts which the defendant gave to the sub-tenants were signed by him as attorney.

I have no doubt that the agreement is not a tenancy agreement. As a fact Rahman failed to repay the loan and the defendant has obtained a judgment against him. And on the 1st March (the day after the agreement expired) Abdul Rahman surrendered the tenancy and the plaintiff became the principal tenant in his place.

There must be Judgment for the plaintiff in respect of items (i)*, (ii)†, and (v)‡ of paragraph 5 of the Statement of Claim. Upon the question of damages I do not take the view that the defendant has been contumacious in regard to these proceedings. His view of the construction of the agreement was not unreasonable, although in my view it was wrong. The plaintiff is entitled to the rent which the defendant would have paid for the portion of the room which he occupied. This is to be assessed at $4 per month for 19 months and I award the sum of $76 as damages.

Stay of execution till end of this month, to be extended if notice of appeal filed within that time.

*From the above decision the defendant appealed.*

**Murray-Aynsley, C.J.** : — The proceedings in this case arose out of what can be described as an hypothecation of a tenancy held by one Abdul Rahman to secure a loan of $800 made by the appellant. This transaction took the form of a power of attorney to enable the appellant to collect rents and also an agreement which purported to be a sub-demise to the appellant for 18 months.

The loan was not repaid but when the period of 18 months had expired the borrower Abdul Rahman assigned his interest in the premises to the respondent who had no notice of the claims of the appellant. In the Court below the argument turned entirely on whether a sub-tenancy was created. On the assumption that if a sub-tenancy was created, the Control of Rent Ordinance would apply, the appellant having during the currency of the alleged term occupied part of the premises. Unless the Ordinance applies there is clearly no answer to the respondent's claim. The learned Judge who heard the case held that the transaction did not amount to a sub-demise; I do not feel inclined to disturb this finding. In any event it was not within the contemplation of the Ordinance that its protection should be given to a mere mortgagee.

I would dismiss the appeal with costs. Deposit to respondent.

**Mathew, C.J. (F.M.)** : — I have had the advantage of reading the judgment of the learned President of this Court with which I agree and have nothing to add.

**Knight, J.** : — I agree.

*Appeal dismissed.*

* (i) A declaration that the defendant is not a tenant or sub-tenant statutory or otherwise of the premises No. 103, Bukit Timah Road, Singapore, or any part thereof.

† (ii) For possession of the middle room of the ground floor of the said premises No. 103, Bukit Timah Road, Singapore.

‡ (v) Costs.

## PARK & FRANCIS LTD. v. NG ENG KIAT.

[O. C. J. (Murray-Aynsley, C.J.) August 13, 1953]
[Singapore — Civil Suit No. 651 of 1952]

*Contract — Offer and acceptance without definite consideration — Work abandoned — Quantum Meruit.*

The plaintiff in this case claimed from the defendant $12,237.18 "for work done and expense incurred by the plaintiffs for the defendant at his request". The work was to bore 60 holes on the defendant's land in order to look for tin there. The defendant paid $5,000 advance and the work commenced on April 9th and continued until the end of May when the work was abandoned with 14 holes bored.

The defendant alleged that a letter from the plaintiffs dated 5th April constitutes an offer where the plaintiffs were obliged to bore 60 holes at the maximum charge of $10,000 at **pro rata** basis when work is abandoned and the defendant has accepted this offer. Therefore the defendant has overpaid.

While work was in progress it was found that the costs would be heavier than estimated and that if the work was completed the total cost would have been $40,000 or more. No communication was made to the defendant until a telegram was sent on May 14th asking for more money and no letter was sent to the defendant until June after the work had been abandoned.

**Held:** the defendant was not liable in any event for expenditure incurred after the plaintiffs had failed to communicate with him particularly when the letter of April 5th contemplated cessation of work after boring a few holes.

CIVIL SUIT.

*George J. Okell* for the plaintiffs.

*T. W. Ong* for the defendants.

*Cur. Adv. Vult.*

**Murray-Aynsley, C.J.** : — This litigation arose out of some unsuccessful prospecting for tin in the Settlement of Malacca.

The defendant was beneficially interested in certain land in the neighbourhood of Jasin and was optimistic